

REMARKS/ARGUMENTS

Claims 2-25 are pending in the present application.

This Amendment is in response to the Office Action mailed June 27, 2008. In the Office Action, the Examiner objected to claims 7 and 9, rejected claims 2-25 under 35 U.S.C. §103(a). Applicant has amended claims 7 and 9. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Claim Objections

In the Office Action, the Examiner objected to claims 7 and 9 due to minor informalities. Applicant has amended claims 7 and 9 as suggested by the Examiner. Accordingly, Applicant respectfully request that the claim objections be withdrawn.

Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 2, 5, 10-11, 14, 20-21, and 24-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,504,744 issued to Adams et al. ("Adams") in view of U.S. Patent No. 6,304,551 issued to Ramamurthy et al. ("Ramamurthy"); claims 3-4, 12-13, 18-19, and 22 under 35 U.S.C. §103(a) as being unpatentable over Adams in view of Ramamurthy and further in view of U.S. Patent No. 5,373,841 issued to Goh et al. ("Goh"); claims 6-9 under 35 U.S.C. §103(a) as being unpatentable over Adams in view of U.S. Patent No. 5,790,554 issued to Pitcher et al. ("Pitcher") and further in view of Ramamurthy; claims 15-17 under 35 U.S.C. §103(a) as being unpatentable over Adams in view of Ramamurthy and further in view of Pitcher; and claim 23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,563,874 issued to Kant ("Kant") in view of Adams in view of Ramamurthy. Applicant respectfully traverses the rejection and submits that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP §2143, p. 2100-126 to 2100-130 (8th Ed., Rev. 5, August 2006)*. Applicant respectfully submits that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

Adams merely discloses a dynamic bandwidth controller 30 including a cell monitor 31 (Adams, col. 6, lines 31-32; Figure 3) and a broadband switch 21 receiving cells from customer A at input port 22 (Adams, col. 4, lines 62-65; Figure 2). The Examiner alleges that the cell monitor 31 “monitors the bandwidth consumption by one or more types of packet traffic received in the packet forwarding device”, as recited in independent claims 5, 6, and 8. Applicant respectfully disagrees. Since the Examiner alleges that the broadband switch 21 corresponds to the packet forwarding device, the cell monitor 31 could not monitor the bandwidth consumption by packet traffic received in the packet forwarding device because the cell monitor 31 receives the transmitted cells from customer A before the broadband switch 21 (Adams, col. 10, lines 40-52, Figures 2-4). In other words, since the cell monitor 31 receives the cells before the broadband switch 21, the cells cannot be “packet traffic received in the packet forwarding device”, as delineated in the claims.

In addition, Adams merely discloses the following:

“As shown in FIG. 4, four physical buffers 41, 42, 43 and 44 are provided. The first buffer 41 is arranged to buffer cells being transmitted at 1 Mbit/s, the second buffer 42 is arranged to buffer cells being transmitted at 2 Mbit/s, the third buffer 43 is arranged to buffer cells transmitted at 5 Mbit/s, and the fourth buffer 44 is arranged to buffer cells transmitted at 10 Mbit/s... Cells are transmitted from customer equipment and supplied to the port 22 as a serial stream...” (Adams, col. 10, lines 30-52)

“...the processor 32 will convert the actual level of bandwidth available to one of the processable transmission rates and supply a suitable signal to the switch 48 accordingly. For example, if it is determined that the actual available bandwidth is 3 Mbit/s, a signal identifying this level of provision is supplied to the processor 32 from the network manager 26. In response to this signal, the processor 32 selects one of the processable transmission rates which, in this example, will be 2 Mbit/s, thereby allowing transmission to occur at high priority up to a limit of 2 Mbit/s. A signal is supplied to the switch 48 from the processor 32, thereby directing cells from this link to the [2 Mbit/s] buffer 42.” (Adams, col. 10, lines 23-49).

As described in Adams, the buffers 41, 42, 43, and 44 are merely designed to buffers cells that are to be transmitted at different rates. Based on the actual level of bandwidth available, the processor 32 sets the transmission rate and thus, the buffer to be used. There is no teaching or suggestion that the cells in buffer 41 being transmitted at 1Mbits/s is set at a lower priority with respect to the cells in buffer 42 being transmitted at 2Mbits/s. Instead, the processor 32 merely determines which buffer to send the cells based on the available bandwidth. In contrast, independent claims 10 and 20 recite “packets buffered in the first queue having higher transmission priority than packets buffered in the second queue.” Since the availability of bandwidth is not related to a priority level of the cells, the buffer 41 cannot be “the second queue” and the second buffer 42 cannot be “the first queue,” as alleged by the Examiner (Office Action, page 4 and 6).

Similarly, since buffers 41-44 do not represent queue of first or second priority, Adams fails to disclose “automatically changing assignment of at least one type of packet traffic of the one or more packet traffic from a queue having a first priority to a queue having a second priority” as delineated in independent claims 5, 6, 8, 10, 20, and 23.

As discussed above, Adams does not disclose or render obvious elements of independent claims 5, 6, 8, 10, 20, and 23. A review of Ramamurthy, Goh, and Pitcher reveals that these cited prior arts fails to cure the deficiencies of Adams. Accordingly, a combination of Adams with any other references in rejecting claims 5, 6, 8, 10, 20, and 23 and claims dependent thereon is improper.

Therefore, Applicant believes that independent claims 5, 6, 8, 10, 20, and 23 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. §103(a) be withdrawn.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: December 22, 2008 By William W. Schaal
William W. Schaal
Reg. No. 39,018
Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025